

Amendment No. 1 to SB1193

Gardenhire  
Signature of Sponsor

**AMEND Senate Bill No. 1193**

**House Bill No. 1030\***

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 40-35-120, is amended by adding the following new subsection:

(j)

(1) This section does not prohibit a court from sentencing a defendant as a repeat violent offender, pursuant to § 40-35-124, if the sentencing would result in a longer period of incarceration.

(2) In determining the appropriate sentence for a defendant, the sentencing court shall determine whether the defendant is required to be sentenced as a repeat violent offender under this section or § 40-35-124. If the defendant is required to be sentenced as a repeat violent offender under only one (1) such statute, then the court shall sentence the defendant pursuant to the statute that requires sentencing as a repeat violent offender.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following new section:

**40-35-124.**

(a) As used in this section:

(1) "Prior conviction":

(A) Means the defendant was convicted of a violent offense that occurred on or after July 1, 2023, but before the violent offense for which the defendant is to be sentenced; provided, however, that a defendant

who was convicted of multiple violent offenses based on conduct that occurred contemporaneously, occurred at the same location, and represented a single continuous criminal episode with a single criminal intent shall only be considered to have a prior conviction for the offense that would result in the highest point allocation pursuant to this section;

(B) Does not include a finding or adjudication that the defendant committed an act as a juvenile that is designated as a violent offense if committed by an adult, unless the defendant was tried as an adult in criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions, and was convicted of the violent offense in a criminal court and sentenced as an adult; and

(C) Includes convictions under the laws of any other state, government, or country that, if committed in this state, would have constituted a violent offense. If a felony from another jurisdiction is not a named violent offense and if the elements of the felony are the same as a violent offense, the offense shall be considered a prior conviction;

(2) "Repeat violent offender" means a defendant who is convicted of a violent offense, which occurred on or after July 1, 2023, and the combination of the strikes allocated pursuant to this section for the violent offense and the defendant's prior convictions equals three (3) or more strikes; provided, however, that at least two (2) of the strikes must be for offenses listed in subdivision (a)(3)(A); and

(3) "Violent offense" means any of the following offenses when committed on or after July 1, 2023:

(A) The following offenses, each of which results in the defendant receiving one (1) strike:

(i) Female genital mutilation, as defined in § 39-13-110;

(ii) Domestic assault, as defined in § 39-13-111, when the offense is a felony offense;

(iii) First degree murder, as defined in § 39-13-202, with a sentence of life imprisonment;

(iv) Second degree murder, as defined in § 39-13-210;

(v) Vehicular homicide, as defined in § 39-13-213(a)(2);

(vi) Aggravated vehicular homicide, as defined in § 39-13-218;

(vii) Especially aggravated kidnapping, as defined in § 39-13-305;

(viii) Aggravated kidnapping, as defined in § 39-13-304;

(ix) Trafficking for a commercial sex act, as defined in § 39-13-309;

(x) Advertising commercial sexual abuse of a minor, as defined in § 39-13-315;

(xi) Aggravated human trafficking, as defined in § 39-13-316;

(xii) Aggravated robbery, as defined in § 39-13-402;

(xiii) Especially aggravated robbery, as defined in § 39-13-403;

(xiv) Carjacking, as defined in § 39-13-404;

(xv) Aggravated rape, as defined in § 39-13-502;

(xvi) Rape, as defined in § 39-13-503;

(xvii) Aggravated sexual battery, as defined in § 39-13-504;

(xviii) Sexual battery, as defined in § 39-13-505;

(xix) Aggravated statutory rape, as defined in § 39-13-506(c);

(xx) Indecent exposure, as defined in § 39-13-511, when the offense is a felony offense;

(xxi) Patronizing prostitution, as defined in § 39-13-514(b)(3);

(xxii) Promoting prostitution, as defined in § 39-13-515;

(xxiii) Public indecency, as defined in § 39-13-517(d)(3);

(xxiv) Continuous sexual abuse of a child, as defined in § 39-13-518;

(xxv) Rape of a child, as defined in § 39-13-522;

(xxvi) Sexual battery by an authority figure, as defined in § 39-13-527;

(xxvii) Solicitation of a minor, as defined in § 39-13-528, when the offense is a felony offense;

(xxviii) Soliciting sexual exploitation of a minor or exploitation of a minor by electronic means, as defined in § 39-13-529;

(xxix) Statutory rape by an authority figure, as defined in § 39-13-532;

(xxx) Promoting travel for prostitution, as defined in § 39-13-533;

(xxxi) Unlawful photographing in violation of privacy, as defined in § 39-13-605, when the victim is under thirteen (13) years of age;

(xxxii) Observation without consent, as defined in § 39-13-607(d)(2);

(xxxiii) Especially aggravated burglary, as defined in § 39-13-1004;

(xxxiv) Aggravated arson, as defined in § 39-14-302;

(xxxv) Incest, as defined in § 39-15-302;

(xxxvi) Child abuse or child neglect or endangerment, as defined in § 39-15-401;

(xxxvii) Aggravated child abuse or aggravated child endangerment or neglect, as defined in § 39-15-402;

(xxxviii) Using a minor to produce, import, prepare, distribute, process, or appear in obscene material, as defined in § 39-17-902(b);

(xxxix) Unlawful sale, distribution, or transportation with intent to sell or distribute a child-like sex doll, as defined in § 39-17-910(f);

(xl) Sexual exploitation of a minor, as defined in § 39-17-1003;

(xli) Aggravated sexual exploitation of a minor, as defined in § 39-17-1004;

(xlii) Especially aggravated sexual exploitation of a minor, as defined in § 39-17-1005;

(xliii) Facilitation, under § 39-11-403, to commit any of the offenses listed in this subdivision (a)(3)(A);

(xliv) Criminal attempt, under § 39-12-101, to commit any of the offenses listed in this subdivision (a)(3)(A);

(xlv) Solicitation, under § 39-12-102, to commit any of the offenses listed in this subdivision (a)(3)(A); and

(xlvi) Conspiracy, under § 39-12-103, to commit any of the offenses listed in this subdivision (a)(3)(A);

(B) The following offenses, each of which results in the defendant receiving one-half (1/2) strike:

(i) Aggravated assault, as defined in § 39-13-102(a)(1)(A)(iii) or § 39-13-102(a)(1)(B)(iii), if the offense involved the use of a deadly weapon;

(ii) Aggravated assault, as defined in § 39-13-102(a)(1)(A)(iv);

(iii) Aggravated assault, as defined in § 39-13-102, if the offense resulted in serious bodily injury to or the death of another;

(iv) Aggravated assault against a first responder or nurse, as defined in § 39-13-116(b)(3), if the offense involved the use of a deadly weapon;

(v) Aggravated assault against a first responder or nurse, as defined in § 39-13-116(b)(1), (b)(2), or (b)(4);

(vi) Voluntary manslaughter, as defined in § 39-13-211;

(vii) Criminally negligent homicide, as defined in § 39-13-212;

(viii) Vehicular homicide, as defined in § 39-13-213(a)(1), (a)(3), or (a)(4);

(ix) Reckless homicide, as defined in § 39-13-215;

(x) Involuntary labor servitude, as defined in § 39-13-307;

(xi) Trafficking persons for forced labor or services, as defined in § 39-13-308;

(xii) Aggravated burglary, as defined in § 39-13-1003;

(xiii) The manufacture, delivery, or sale of a controlled substance, as defined in § 39-17-417, where the instant offense is classified as a Class A, B, or C felony and the person has two (2) or more prior convictions for the manufacture, delivery, or sale of a controlled substance classified as a Class A, B, or C felony, pursuant to § 39-17-417, prior to or at the time of committing the instant offense;

(xiv) Possessing or using a firearm or antique firearm during commission of or attempt to commit a dangerous felony, as defined in § 39-17-1324; and

(xv) Driving under the influence with six (6) prior convictions, as defined in § 55-10-401; and

(C) Any other felony offense, each of which results in the defendant receiving one-quarter (1/4) strike.

(b) The court shall sentence a defendant who has been convicted of a violent offense that occurred on or after July 1, 2023, and that, in combination with prior convictions for violent offenses, results in the defendant having three (3) or more strikes, at least two (2) of which are for offenses listed in subdivision (a)(3)(A), to imprisonment for life without possibility of parole if the court finds beyond a reasonable doubt that the defendant is a repeat violent offender.

(c) The finding that a defendant is or is not a repeat violent offender is appealable by either party.

(d)

(1) This section does not prohibit a court from sentencing a defendant as a repeat violent offender, pursuant to § 40-35-120, if the sentencing would result in a longer period of incarceration.

(2) In determining the appropriate sentence for a defendant, the sentencing court shall determine whether the defendant is required to be sentenced as a repeat violent offender under this section or § 40-35-120. If the defendant is required to be sentenced as a repeat violent offender under only one (1) such statute, then the court shall sentence the defendant pursuant to the statute that requires sentencing as a repeat violent offender.

SECTION 3. This act takes effect July 1, 2023, the public welfare requiring it, and applies to sentencing for offenses occurring on or after that date.